

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Implementation of Sections 12 and 19)
of the Cable Television Consumer)
Protection and Competition Act of 1992)
)
Development of Competition and)
Diversity in Video Programming)
Distribution and Carriage)

MM Docket No. 92-265

To: The Commission

REPLY OF SUPERSTAR CONNECTION TO OPPOSITION
TO PETITIONS FOR RECONSIDERATION

Superstar Connection ("Superstar"), pursuant to Section 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, hereby files this reply to the opposition of DirecTv, Inc. ("DirecTv") to the Petitions for Reconsideration filed by the cable programmers in this proceeding.

DirecTV credits Section 19 of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"), 47 U.S.C. § 628, and the Commission's implementing regulations, 47 C.F.R. §§ 1000, et seq., with enabling DirecTv to "sign its initial cable programming agreements" so as to build a true "national alternative to cable television as envisioned by Congress."^{1/} DirecTv is one of the more recent entrants into the

^{1/} DirecTv Opposition at 2.

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direct broadcast satellite ("DBS") service, and is the DBS operating, customer service and programming acquisition arm of Hughes Communications, Inc. DirecTv's grandiose programming distribution plans for the DBS market, however, will not be subject to either Section 19 of the 1992 Cable Act or the Commission's new program access regulations. The new program access rules apply to "satellite cable programming" which is programming designed primarily for receipt by cable operators. 47 C.F.R. § 1000(h). Because DirecTv is not designing its Ku-Band DBS service primarily for delivery of programming the Home Satellite Dish ("HSD") market, its programming distribution actions would be exempt from regulation.

This exemption allows DirecTv to complain bitterly about exclusivity, vertical integration, and discrimination within the cable programming market, while at the same time allowing it to conduct itself in an exclusive, integrated and discriminatory manner. This inconsistency is borne out by DirecTv's own position in this proceeding, and its publicized marketing plans. First, DirecTv, in opposing the various petitions for reconsideration filed by the cable programmers, argues that "Liberty Media has been at the forefront of the cable industry's attempts to rewrite the plain language of Section 628 in order to throw up as many substantive and procedural obstacles as possible to impede alternative video providers from invoking

the protections of Section 628."^{2/} Similarly, DirecTv complains about the restrictions resulting from contracts for geographic exclusivity. DirecTv claims that it needs "national distribution rights" so it may achieve economies of scale and "as an inherently nationwide service, the inability of DirecTv to obtain access to programming in varying parts of the country would cause operational difficulties and consumer confusion as to the services available from DirecTv."^{3/} DirecTv also chides Viacom for not licensing DirecTv (although Viacom has already licensed another DBS operator), allegedly resulting in actionable non-price discrimination.

DirecTV should abide by the familiar warning: "People who live in glass houses...". DirecTv's DBS service will be distributed neither in a competitive nor nondiscriminatory manner. Other multi-channel video programming distributors seeking to distribute DirecTv's DBS programming will not be able to enjoy the protections of Section 628. Moreover, competing distributors will be unable to obtain access to DirecTv's programming in varying parts of the country, because DirecTv will not make its service available to all distributors. As has been

^{2/} DirecTv Opposition at 4. DirecTv argues that violations of the discrimination regulations promulgated pursuant to Section 628(c) constitute per se violations of the statute such that no injury need be shown to bring a complaint. Id.

^{3/} DirecTv Opposition at 10.

widely reported, DirecTv's DBS service will be distributed on an **exclusive** basis to rural America by the National Rural Telecommunications Cooperative ("NRTC"). No other distributor will have similar rights to distribute DirecTv's DBS service.^{4/} While NRTC and DirecTv have argued strenuously for mandatory access to cable programming and against exclusive distribution arrangements here, DirecTv is selling geographic rights for its own DBS service so that distributors "will have **exclusive** rights to market and sell 20 channels of cable and broadcast television programming in specific geographic areas."^{5/} This exclusivity will be sold to the lucky distributors for between \$31.50 and \$35.00 per residence and distributors will have to pay fees ranging from \$1.20 to \$2.00 for a "development and marketing fee per residence".^{6/} Moreover, in order to participate in the DirecTv program, the distributor must pay in advance "non-refundable ten-year annual dues" in the amount of \$5,000.00.^{7/}

^{4/} Details of DirecTv's marketing plans, in conjunction with the NRTC, were detailed in an article last July in Satellite Business News. See Satellite Business News, July 15, 1992 at 1, 4 and 21.

^{5/} Id. at 4.

^{6/} Id. at 21.

^{7/} Id. at 21. Additional fees will be assessed as follows: \$1.18 per month for "security service fee", \$.90 per month for a "ground services and telemetry tracking and control

[Footnote Continued Next Page]

Most impressive was NRTC's and DirecTv's ability to shield themselves from criticism over these arrangements while at the same time promoting the program access provisions in Section 19. NRTC was upset that Satellite Business News obtained and used NRTC's "confidential" workbook detailing these prices and exclusive arrangements. Mr. Phillips said "the NRTC or any other business should be able to conduct their business in private."^{8/} As set forth previously, NRTC has utilized every means available to obtain the confidential business information of its competitors. However, as soon as someone obtains information about NRTC, positions change.

Similarly, NRTC and DirecTv want to be the only exception to the program access requirements. Discovery Communications, Inc. suggested there should be an exemption for programming of an educational and informational nature. DirecTv challenged this exemption stating that "an exemption that would

[Footnote Continued]

fee", \$.29 per month "authorization fee", a one-time "account set-up" fee of \$1.50, and a "new subscriber fee" of \$5.00. Id. One must remember that NRTC has been complaining of superstition programming practices which have price differentials measured in pennies. Yet, free of regulatory oversight, DirecTv and NRTC are free to charge any dollar amount they please and solicit exclusive distribution agreements.

^{8/} Id. at 4.

allow 'non-commercial, educational or informational vendors' to enter into exclusive arrangements or to charge highly discriminatory rates among different MVPDs does not promote either availability of or access to such programming."^{9/} DirecTv's own exemption will allow it and the NRTC to profit tremendously and discriminate against any and all MVPDs. It will remain for the C-band programming vendors, cable operators, and HSD distributors to insure that rural America receives affordable and competitively distributed programming services. The C-band distributors, such as Superstar, have sold to all distributors, refusing to charge exorbitant rates for exclusivity.^{10/}

^{9/} DirecTv Opp. at 13-14.

^{10/} For example, Superstar's superstation programming services have higher penetration in the HSD market than in cable, SMATV, or MMDS. While WGN enjoys over 40 percent penetration in total television households, and more than 67 percent for the total cable homes, 78 percent of the HSD subscribers receive WGN. Similarly, for the other superstations sold by Superstar, WPIX, KTVT and KTLA, the penetration in total cable homes ranks from approximately 10 to 17 percent, while in the HSD market it ranks from 31 to 42 percent. Clearly, superstation programming is being distributed freely and openly in the C-band HSD market without any exclusive contracts, hidden fees or other discriminatory condition, resulting in this high penetration.

Because DirecTv will profit from restrictions on C-band programming distribution to the benefit of its exclusive DBS Ku-band service, its opposition, as well as NRTC's Petition for Reconsideration, should be rejected.

Respectfully submitted,

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July 26, 1993

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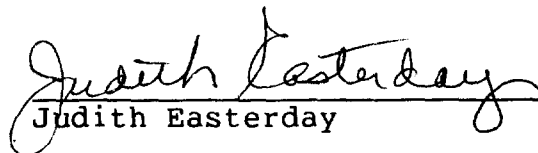
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